



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

FEB - 6 2019

Jean-Pierre L. Oriol
Commissioner-Designee
Virgin Island Department of Planning and Natural Resources
45 Mars Hill
Frederiksted, Virgin Islands 00840

Re: HOVENSA Environmental Response Trust 2019 Budget Proposal
EPA ID No.: VID980536080

Dear Mr. Oriol:

The United States Environmental Protection Agency – Region 2 (EPA) has received and reviewed the proposed 2019 budget covering the calendar year starting on January 1, 2019, submitted by the HOVENSA Environmental Response Trust (ERT) on December 20, 2018. The proposed 2019 budget was addressed to Carol Stein of the EPA, then Commissioner Dawn Henry of the Virgin Islands Department of Planning and Natural Resources (VIDPNR), Donald Frankel of the United States Department of Justice (USDOJ) and Claude Walker of the Virgin Islands Department of Justice (VIDOJ) and was carbon copied to, among others, Kathlyn Worrell-George, Benjamin Keularts and Kenneth Mulligan of the VIDPNR.

Section 7.13 of the Environmental Response Trust Agreement (Agreement) details which matters are subject to approval by EPA, the USDOJ, VIDPNR or the VIDOJ. The proposed budget contains a detailed table (Table 1) itemizing the expected expenditures and corresponding costs, as well as a column indicating which items require EPA, USDOJ, VIDPNR and/or VIDOJ approval. EPA believes the ERT correctly identified which party(ies) is required to approve each item identified in its proposed budget.

It should be noted that the ERT's December 20, 2018 cover letter states that the RCRA Financial Trusts (RCRA Trusts) are one of four "funding" sources for the ERT. This is incorrect. The purpose of a RCRA Trust is to ensure monies are available to complete remaining necessary work (such as corrective action or post closure work) at a site if the Grantor (here the ERT) is no longer able to perform the work. Money from a RCRA Trust may only be returned to the Grantor if EPA determines the amount of money is less than the estimated cost of completing the remaining work referenced in the RCRA Trust. EPA has not asked the ERT to delete the funding reference in its December 2019 cover letter since the budget per se (*i.e.*, Table 1) does not refer to the Trusts as sources of funding.¹

¹ The ERT's December 20, 2018 cover letter also includes four footnotes. Footnote 2 correctly indicates that there have been no disbursements from the RCRA Financial Assurance Trusts to the ERT to date. Footnote 3 indicates, among other things, that the ERT has invoiced Limetree for costs tied to the RCRA Trusts. EPA has not reviewed invoices sent to Limetree. EPA's proposed approval of the specified line items of the 2019 budget is tied strictly to Table 1 and does not include approval of statements made in footnote 3. *See also* footnote 2 below.

Many of the projected expenditures listed in Table 1 (line items 1-6, 8, 10(b) and 12-24) are subject to EPA approval after consultation with the VIDPNR. See Section 7.13.1 of the Agreement.

Line items 10a and 10b are subject to the terms of a judicial Consent Decree entered on June 7, 2011 (Civ. No. 1:22-cv-0006). EPA is prepared to approve the 2019 budget proposal, dated December 20, 2018, for each of these line items.^{2,3} If you have any concerns regarding any of these items, please detail your concerns and send them to my attention in writing. If we do not hear from you within two weeks of your receipt of this letter, we will assume you have no comments and EPA will approve the above referenced line items.

Line items 7 and 11 are subject to VIDPNR approval after consultation with the EPA, and line item 25 is subject to joint EPA and VIDPNR approval. See Sections 7.13.2 and 7.13.4 of the Agreement. The ERT, however, did not project any costs for these three items. Line items 26-31 are subject to a separate approval process by USDOJ and VIDOJ and, therefore, are not being addressed in this letter. See Section 7.13.5 of the Agreement.

If you have any questions, please do not hesitate to contact Flaire Mills of my staff at 212 637-3198.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Schaaf". The signature is stylized with a large, sweeping initial "E" and a cursive "Schaaf".

Eric Schaaf
Regional Counsel

²With respect to Lines 4 – 6 and 8, the release of money from the RCRA Financial Assurance Trust(s) is subject to EPA's annual review of monies spent and the estimated remaining cost of completing closure and corrective action, adjusted for inflation. This letter only concerns approval of the projected expenditures for the designated activities, which is distinct from this process.

³ There are no projected costs for line items 10a and 12-24.